TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 202

CHARLES C. CHILDERS, STATE AUDITOR OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

JOHN BEAVER AND BENJAMIN QUAPAW

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED NOVEMBER 14, 1924

(30,691)

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[fols. 1-3] CITATION—In usual form, showing service on Joseph W. Howell; omitted in printing

[fol. 4] **IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA**

In Equity. No. 3003

JOHN BEAVER and BENJAMIN QUAPAW, Plaintiffs,

vs.

C. C. CHILDERS, State Auditor of the State of Oklahoma, Defendant

AMENDED BILL OF COMPLAINT—Filed Nov. 22, 1923

To the Honorable Judge of the United States Court for the Eastern District of Oklahoma:

Plaintiffs, with leave of Court, by their undersigned solicitor, bring this their amended bill of complaint against the defendant named in the caption above, and thereupon complain and show the Court:

I

Plaintiffs are both citizens of the State of Oklahoma and residents of the County of Ottawa, in said State, in the Eastern District of Oklahoma.

Defendant, C. C. Childers, is a citizen of the State of Oklahoma, and a resident of, and can be found at Oklahoma City, Oklahoma, in the Western District of said State. He was duly elected to the Office of State Auditor of the State of Oklahoma, and is the duly qualified and acting incumbent of that office. The full name of said defendant is unknown to plaintiffs. Therefore, his name appears in the caption partly by initials.

II

This is a suit of a civil nature of which the District Courts of the United States have original jurisdiction, involving Federal questions, to-wit: The construction of the Act of Congress of March 2, [fol. 5] 1895, (28 Stat., 876, 907), by which restrictions on the alienation of Quapaw Indian allotments were imposed for a period of 25 years, and the Act of Congress of March 3, 1921, (41 Stat., 1225, 1248), extending such restrictions for a period of 25 years from the date thereof, in connection with the Inheritance Tax laws of the State of Oklahoma, approved March 15, 1915, (S. L. 1915, p. 215), and March 25, 1919, (S. L. 1919, p. 429), which impose

an inheritance tax on Inherited Estates, and make such property subject to sale for failure to pay said tax.

It also involves, in connection with said laws of Oklahoma, a construction of the 2nd paragraph of Article VI of the Constitution of the United States, making said Constitution, and the laws and treaties made in pursuance thereof, the Supreme Law of the Land, as well as Article V of the Amendments to the Constitution of the United States, and Section 1 of Article XIV of said Amendments, which guarantee that no person shall be deprived of property without due process of law.

This suit is instituted by plaintiffs in their own names and right but under contracts authorized and approved by the Commissioner of Indian Affairs and the Secretary of the Interior.

III

They allege that they, John Beaver and Benjamin Quapaw, were brother and husband, respectively, of one See-Sah Quapaw, who in her lifetime was a member of the Quapaw Tribe of Indians in Ottawa County, Oklahoma, and who died on the 4th day of March, 1920, in said County, seized of certain lands therein, located in said Eastern District, which she acquired, in part, by allotment as a member of said Tribe, and, in part, by inheritance from her deceased daughter, Hum-bah-wat-tah, who died on or about June 15, 1900; that plaintiffs were the sole and only heirs of said See-Sah Quapaw and inherited her said estate in equal shares; that none of said lands have been partitioned among the heirs.

That the lands allotted to the said See-Sah Quapaw in her own [fol. 6] right, are described as follows:

Southeast quarter, and the southeast quarter of the northeast quarter of Section thirty (30), township twenty-nine (29) north, range twenty-three (23) east of the Indian Meridian, Ottawa County, Oklahoma.

That the lands of the said Hum-bah-wat-tah were acquired by her [illegible] her lifetime as an allottee of the Quapaw Tribe of Indians, and [illegible]ed by inheritance to her father and mother, the said See-Sah Quapaw and Benjamin Quapaw, that the description of the allotment of said Hum-bah-wat-tah is as follows:

East half of the northwest quarter, the west half of the northeast quarter and the northeast quarter of the northeast quarter of Section thirty (30), township twenty-nine (29) north, range twenty-three (23) east of the Indian Meridian, Ottawa County, Oklahoma.

Furthermore, upon information and belief, plaintiffs allege that, on or about the 26th day of September, 1896, the United States, pursuant to and upon the terms, restrictions and conditions contained in the said Act of Congress, approved March 2, 1895, in due form, executed, issued, and delivered to the said See-Sah and Hum-bah-wat-tah Quapaw, respectively, patents to said described lands, it being

provided in said Act that such allotments should be inalienable for twenty-five years from and after the date of said patents; and that, in like manner, said patents recite that the lands therein described shall be inalienable for twenty-five years after the date thereof.

That said restrictions ran with the land and were in full force and effect on the dates when the said Hum-bah-wat-tah and See-Sah Quapaw died, to-wit, Jan. 15, 1900, and March 4, 1920, and have at all times since remained in force, but would have expired September, 25, 1921, except for the said Act of Congress, approved March 3, 1921, by which the restrictions aforesaid, on said lands, were extended for a period of twenty-five years from the date thereof.

That plaintiffs, John Beaver and Benjamin Quapaw, are both full-[fol. 7] blood Quapaw Indians and members of the Quapaw Tribe, of the non-competent class, and are under the supervision of the Quapaw Agency at Miami, Oklahoma, and are among those Indians specifically named in said Act of March 3, 1921, whose lands were made subject to restrictions against alienation for twenty-five years by virtue thereof; that the restrictions extended and imposed by said Act of March 3, 1921, apply both to allotted and inherited lands of the persons named therein and that all such lands are inalienable until such restrictions shall be removed in the manner provided by said Act.

IV

Plaintiffs are informed, and so allege, that the defendant claims that the transfer of said lands to them, by inheritance, was and is subject to the Inheritance Tax laws of the State of Oklahoma, and therefore insists and demands that plaintiffs pay to said State an Inheritance Tax, according to the rates prescribed by the State law, based upon the value of the estate of said See-Sah Quapaw as of the date of her death.

That defendant, in the supposed performance of the duties of his office, now proposes and threatens to enforce and collect, by summary process, the Inheritance tax which he claims is due from plaintiffs, as aforesaid, and to cause said lands to be sold if plaintiffs fail to comply with his demands.

V

The Act of Congress of March 2, 1895, (28 Stat., 876,907), contains the following provision, which was carried into the patents to the Quapaws, (including the patents by which the lands inherited by these plaintiffs were conveyed to the original allottees):

Provided, that said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents.

This restriction was extended by the Act of Congress of March 3, 1921, (41 Stat., 1225, 1248), which reads, in part, as follows:

[fol. 8] Sec. 26. That section 1 of the Act of Congress, approved March 2, 1895, (Twenty-eighth Statutes at Large, page 907), in so

far as the same relates to the allotments of land to the Quapaw Indians and to restrictions against alienation of said allotments, be and the same is hereby, amended so as to provide that the restrictions which now exist against the alienation of the lands allotted to and allotted lands inherited by the Quapaw Indians named in the letter of January 15, 1921, of the Secretary of the Interior, to-wit: naming John Beaver and others, including Benjamin Quapaw), and including any Quapaw allotted or inherited lands in which any of the said named Indians have any undivided interests, be, and the same are hereby, extended for the further and additional period of twenty-five years from the date of this Act: Provided, however, That the Secretary of the Interior may, with or without the application of the Indian owner, remove such restrictions, wholly or in part, after he has found such Indian owner to be as competent as the average white man to conduct his own business affairs with benefit to himself, under such rules and regulations as he may prescribe in regard thereto, and concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians:

Referring to the State Inheritance Tax of Oklahoma, Section 5 of the Legislative Act of March 25, 1919, supra, reads, in part, as follows:

Section 5. Section 8 of Chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

Section 8. Every such tax shall be and remain a lien upon the property transferred until paid.

Said Act of March 25, 1919, also provides:

Section 7. Section 10, Chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

Section 10. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will entitle him to pay such taxes in the same manner as he might be entitled by law to do for the payment of the debts of the decedent. * * * He shall not deliver or be compelled to deliver any specific legacy or property subject to the tax under this Act to any person until he shall have collected the tax thereon.

Plaintiffs allege that the foregoing provisions of the laws of the State of Oklahoma are in direct conflict with the Statutes of the United States quoted above, and are repugnant to the Supreme Law clause of the Constitution of the United States, as set forth in the 2nd paragraph of Article VI thereof; that the above described lands, which plaintiffs inherited from the said See-Sah Quapaw, are and al- [fol. 9] ways have been inalienable, and not subject to lien, except with the approval of the Secretary of the Interior.

VI

Plaintiffs further allege that the claims and demands of said defendant, C. C. Childers, are repugnant to, and in violation of, the

same, have clouded the title of plaintiffs to said lands, and will continue to cloud the title thereto until such claims are denied, set aside, and held for naught; that the laws of Oklahoma provide no relief where titles to lands are so included, nor do such statutes provide a plain, speedy and adequate remedy at law for plaintiffs, under the facts and circumstances herein stated.

VII

It is also alleged by plaintiffs that the claims and demands of defendant, C. C. Childers are repugnant to, and in violation of, the policy of the United States looking to the protection of said Indians, as prescribed by said Acts of March 2, 1895, and March 3, 1921.

Plaintiffs allege that they and their affairs are under the supervision of the United States, and more particularly of the Quapaw Agency in Ottawa County, Oklahoma; that the lands so inherited by them, and also their own allotments, are leased for mining purposes under leases approved by the Department of the Interior and are subject to the jurisdiction thereof; that their income is derived from restricted property and is held in trust by the United States, for their benefit, and is disbursed to them, or for them, pursuant to the rules and regulations and orders of the Interior Department; that all of the funds so held for them were acquired since the death of said See-Sah Quapaw, and are not subject to any lien on behalf of said Inheritance Tax and are not liable for the payment thereof.

VIII

Plaintiffs represent to this Honorable Court the fact to be that the [fol. 10] ordinary and usual functions of the Probate Court of Ottawa County, Oklahoma, are almost, if not entirely, suspended as to Quapaw estates while the same are subject to Federal restrictions; that the power to determine the heirs of Quapaw Indians rests exclusively with the Secretary of the Interior; that the estates of such Indians cannot be partitioned without the consent of said Secretary; that wills made by them are subject to his approval, and that, in exercising the power of approval, he is not bound by the laws of Oklahoma where such laws restrict the power of the testator to convey.

They accordingly allege that said Probate Court of Ottawa County is not vested with such full and complete jurisdiction over Quapaw estates as would entitle it to administer the State Inheritance laws with respect to such estates, either as to the appointment of administrators, or the partitioning of estates (where partition might be necessary), or as to the appraisement and sale of lands; and that the sale of plaintiffs' said lands, or the appraisement, without the approval of the Secretary of the Interior, would be contrary to the mode prescribed by the laws of Congress, and without due process of law, in violation of the Constitutional rights guaranteed these plaintiffs by Article V, and Section 1 of Article XIV, of the Amendments to the Constitution of the United States.

In this connection they also allege that they have been, and are, injured in their property rights by defendant's claim of right, pursuant to Section 7 of the Act of March 25, 1919, aforesaid, to take and hold their said property until the question of their liability to pay such tax, as well as the amount thereof, is determined, in that they have been deprived, constructively, of the right of peaceable possession and ownership, in an arbitrary manner and without due process of law, contrary to their Constitutional rights as guaranteed by the aforesaid Amendments to the Constitution of the United States.

[fol. 11] IX

Plaintiffs further allege that transfers of estates do not come within the purview of the Inheritance Tax laws of the State of Oklahoma, where, as in the case now submitted, such estates are otherwise exempt from taxation generally; that the imposition of any Inheritance Tax which would necessarily result, in the enforcement thereof, in a conflict with the laws of the United States, would be repugnant to the intent and purpose of the Constitution and laws of the State of Oklahoma; that the assertion of the right to collect such a tax or to take and hold the lands of plaintiffs to enforce the collection thereof amounts to an assertion of a right or interest in said property and is contrary to the Agreement of the State of Oklahoma with the United States, as set forth in Section 3 of Article I of the Constitution of said State, and is inconsistent with Section 1 of the Enabling Act of Congress providing for the admission of Oklahoma and Indian Territory as a State, approved June 16, 1906, (34 Stat., 267).

Wherefore, inasmuch as plaintiffs are without full and adequate remedy at law, and are only relievable in a court of equity, they pray that a writ of injunction be issued out of this Honorable Court restraining and enjoining defendant from collecting or attempting to collect any Inheritance Tax from them on account of the inheritance of any lands or other property from said See-Sah Quapaw, and that the claims of defendants be declared null and void and of no force and effect in law, and that the pretended lien on said lands be cancelled and forever held for naught, and the cloud on their titles be removed therefrom.

And may it please your Honor to grant to plaintiffs a writ of subpena to be directed to the said C. C. Childers, State Auditor of the State of Oklahoma, thereby commanding him at a time certain and under a certain penalty therein to be limited, to personally appear before this Honorable Court, and then and there, full, true and [fol. 12] direct and perfect answer make to all and singular the premises, and to stand and perform, and abide by such orders, direction and decree, as may be made against him, in the premises, as shall be just and equitable, and that plaintiffs may recover their costs herein expended.

(Sgd.) Joseph W. Howell, Solicitor for Plaintiffs.

[fols. 13 & 14] Sworn to by Joseph H. Howell. Jurat omitted in printing.

[ol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDED BILL OF COMPLAINT—Filed Nov. 16, 1923

To the Honorable Robert L. Williams, Judge of the United States District Court within and for the Eastern District of Oklahoma:

Comes now the Defendant, C. C. Childers by his Attorneys, George F. Short, Attorney General of Oklahoma, Clifford W. King and Leon S. Hirsh, Assistant Attorneys General of Oklahoma, and for answer to the Amended Bill of Complaint filed herein by the Plaintiffs, respectfully shows to the court;

I

That he does not deny, but specifically admits all of the allegations of fact contained in said Amended Bill of Complaint except these, to-wit:

First. Defendant respectfully denies that the lands described in said Amended Bill are restricted by any constitutional or statutory provision of the United States to the result that the said lands are non-taxable in their devolution under the provisions of the Inheritance Tax laws of the State of Oklahoma, approved March 15th, 1915 (Session Laws 1915, page 215), and March 25th, 1919 (Session Laws [fol. 16] 1919, page 429).

Second. Defendant also respectfully denies that the said Inheritance Tax Laws of the State of Oklahoma are repugnant to or in conflict with the statutes and or the Constitution of the United States; and denies that the lands described in said Amended Bill are not subject to the lien provided in said Inheritance Tax Laws.

Third. And defendant, while admitting all al-egations of ultimate fact in said Amended Bill contained, further and specifically denies all allegations of said Bill wherein the tenor, intent, effect, and application of laws of the United States or of the State of Oklahoma, are alleged as facts.

II

And for further answer Defendant respectfully shows that said Inheritance Tax Laws of the State of Oklahoma are valid, existing, and fully authorized enactments of the Legislature of the State of Oklahoma, not in conflict with any constitutional and or statutory provisions of the United States, and or of the Constitution of Oklahoma, and that said Inheritance Tax Laws are directly applicable in every particular and provision to the Plaintiffs herein and to the lands described in said Amended Bill of Complaint.

Wherefore, the premises considered, Defendant prays that this Honorable Court deny any and all relief asked by said Plaintiffs, and

further requests that decree be rendered in behalf of said Defendant, adjudging him his reasonable costs herein expended in this behalf.

C. C. Childers, State Auditor of the State of Oklahoma, by George F. Short, Attorney General of Oklahoma. Clifford W. King and Leon S. Hirsh, Assistant Attorneys General.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—Filed Nov. 22, 1924

It is hereby agreed, by and between the parties to the above entitled cause, through their undersigned solicitors, that the allegations contained in the bill therein relating to the racial and tribal status of the plaintiffs, to the acquisition of the lands described in the bill by the original owners through allotment, and the acquisition of said lands by plaintiffs through inheritance, and all other statements of ultimate facts, are true and correct, including the allegation that defendant, C. C. Childers, claims that the Inheritance Tax Laws of the State of Oklahoma are applicable to the transfer, to Plaintiffs, of the estates mentioned and described in the bill of complaint, and that he intends and threatens to enforce collection of such taxes, on said transfer, by summary process in his official capacity.

It is also agreed, as a fact, that there are certain laws, both Federal and State, which are referred to in the bill, that relate to Indian lands in Oklahoma.

It is not intended by this stipulation to agree upon the construction or effect of said laws, as contended for in the bill, or upon any other legal conclusion, deduction or inference therein stated or implied; it being the purpose of the undersigned Solicitors to confine the issue in the above entitled cause to the sole question of whether transfers by inheritance of Indian property of the kind and under the circum-[fol. 18] stances mentioned in the bill of complaint are subject to the Inheritance Tax laws of the State of Oklahoma, for the guidance of both State and Federal officers concerned in the administration of such matters.

Joseph W. Howell, Solicitor for Plaintiffs. George F. Short, Attorney General; C. W. King, Assistant Atty. Gen.; Leon S. Hirsh, Assistant Attorney General, Solicitors for Defendant.

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—July 19, 1924

1. Indians—Congress Vested with Exclusive Power to Legislate with Reference to Their Restricted Property.—Congress has the exclusive power to legislate with reference to the various Indian Tribes as a dependent people concerning their restricted property, or property held in trust by the United States for their use and benefit, and the fact that Federal citizenship has been conferred upon such Indians in no way militates against this power.

2. The properties of restricted Indians do not become subject to the operation of the laws of the State until all restrictions on the right of alienation have been removed by the Congress.

3. The estate of a restricted deceased Quapaw Indian held in trust by the United States for the heirs cannot be subjected to the payment of an inheritance tax as provided by the laws of the State of Oklahoma.

In Equity

Action by John Beaver and Benjamin Quapaw against George F. Short, Attorney General, and C. C. Childers, State Auditor, of the State of Oklahoma, for an injunction to restrain the collection and enforcement of an inheritance tax against plaintiffs by reason of their inheritance of the estate of one See-Sah Quapaw, a portion of which is a restricted Quapaw Indian allotment located in Ottawa County, Oklahoma.

Joseph W. Howell, Esq., for plaintiffs.

George F. Short, Attorney General; C. W. King, and Leon S. Hirsh, Assistant Attorneys General, for the defendants.

[fol. 20] KENNAMER, District Judge:

See-Sah Quapaw, a full blood restricted Quapaw Indian, died intestate on March 4, 1920, leaving as her only heirs, John Beaver and Benjamin Quapaw, full blood Quapaw Indians, husband and brother respectively of the deceased. The estate inherited by said heirs consisted of the allotment of the deceased, patented on or about September 26, 1896, by virtue of the Act of Congress of March 2, 1895 (28 Stat. 907) Ch. 188) the same being inalienable for a period of twenty five years from and after the date of patent. By virtue of the provisions of the act of Congress of June 25, 1910 (36 Stat. 855 and other supplemental statutes), the Secretary of the Interior determined the heirs of See-Sah Quapaw in accordance with the laws of descent and distribution of the State of Oklahoma, and the Superintendent of the Quapaw Indian Agency, as administrator,

now holds the lands in trust for the benefit of these heirs, and about $11,000.00 accumulated royalties from said restricted lands.

Counsel for the respective parties have stipulated that the bill filed by the plaintiffs correctly states the facts, and that the sole question to be determined in this action is whether the estate inherited by the plaintiffs from see-Sah Quapaw is subject to the inheritance tax provided by Section 9891 Compiled Oklahoma Statutes 1921, (Act of March 15, 1915, comprising Ch. 162 of the Session Laws of 1915, as amended by Act of March 25, 1919, Ch. 296 of the Session Laws of 1919 of Oklahoma), wherein "a tax is hereby laid upon the transfer to persons or corporations of property or any interest therein or income therefrom, when the transfer is by Will or the intestate laws of this state, by deed, or grant, bargain, sale or gift made in contemplation of the death of the grantor," etc.

[fol. 21] Section 9898 of said Code provided that "every such tax shall be and remain a lien upon the property transferred until paid."

The Attorney General, on behalf of the state, contends that the plaintiffs, although restricted Quapaw Indians, being citizens of the United States and of the State of Oklahoma, and the Congress by Act of April 28, 1904, (33 Stats. 573, Ch. 1824), having extended the laws of descent of the State of Arkansas over the Indian Territory and made them applicable in their operation so as to embrace all persons and estates, "whether Indian, Freedman or otherwise," and said laws having been superseded under the provisions of the Enabling Act (Act of Congress of June 16, 1906, 34 Stat. 267, Ch. 335) extending the laws of the Territory of Oklahoma in force, that the devolution of the estate of See-Sah Quapaw is controlled by the laws of descent and distribution of the State of Oklahoma, and that before said heirs of said deceased may succeed to said estate by virtue of said laws that the inheritance tax provided by the laws of Oklahoma must be paid. It is argued that on the admission of Oklahoma as a State all Federal laws of descent and distribution theretofore in force in Indian Territory, irrespective of the provisions of the Enabling Act, terminated, and that the State has the sole and exclusive power over the disposition of property under its jurisdiction. "The title and modes of disposition of real property, within a state, whether inter vivos or testamentary, are not *am*tters placed under the control of Federal authority." See U. S. v. Fox 94 U. S. 315, 28 L. Ed., 192. The rule is well established that the State has sole and exclusive power over the disposition of property under its jurisdiction.

McCormick v. Sullivant, 10 Wheat. 192; 6 L. Ed. 300;

[fol. 22] Schley v. Car Co., 120 U. S. 580, 30 L. Ed. 789;

United States v. Perkins, 163 U. S. 625, 41 L. Ed. 287;

Snyder v. Bettman, 190 U. S. 249, 47 L. Ed. 1035;

Wilcox v. Jackson, 13 Pet. 498, 10 L. Ed. 264;

Langdon v. Sherwood, 124, U. S. 74, 31 L. Ed. 344;

O'Callighan v. O'Brien, 199 U. S. 99, 50 L. Ed. 101;

Ellis v. Davis, 109 U. S. 485, 27 L. Ed. 1006;

Knowlton v. Moore, 178 U. S. 43, 44 L. Ed. 970;

Plumber v. Cole, 178 U. S. 115, 44 L. Ed. 998.

But this rule does not authorize or support the power of the State to impose and collect an inheritance tax upon the inheritable property of restricted Indians, over which the Congress has exclusive jurisdiction. The exclusive power of Congress to legislate with reference to the various Indian Tribes as a dependent people and concerning their property is no longer a debatable question, and the conferring of Federal citizenship upon such Indians in no way militates against this power.

In case of United States v. Thurston County, Nebraska, et al., 143 Fed 287, Judge Sanborn in delivering the opinion of the court said:

"Their civil and political status, however, does not condition the power, authority, or duty of the United States to exert its powers of government to control their property, to protect them in their rights, to faithfully discharge its legal and moral obligations to them, and to execute every trust with which it is charged for their benefit. Matter of Heff, 197 U. S. 488, 509, 25 Sup. Ct. 506, 49 L. Ed. 848; Buster v. Wright, 68 C. C. A. 505, 135 Fed. 947; Wallace v. Adams [fol. 23] (C. C. A.) 143 Fed 716, decided at this term. They are still members of their tribes and of an inferior and dependent race, of which the Supreme Court has said that 'from their very weakness and helplessness, so largely due to the course of dealing of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.' U. S. v. Kagama, 118 U. S. 375, 384, 6 Sup. Ct. 1109, 30 L. Ed. 228. The experience of more than a century has demonstrated the fact that the unrestrained greed, rapacity, cunning, and perfidy of members of the superior race in their dealings with the Indians unavoidably drive them to poverty, despair, and war. To protect them from want and despair, and the superior race from the inevitable attacks which these evils produce, to lead them to abandon their nomadic habits and to learn the arts of civilized life, the government of the United States has long exercised the power granted to it by the Constitution (article 1, Sec. 8, subd. 3) to reserve and hold in trust for them large tracts of land and large sums of money derived from the release of their rights of occupancy of the lands of the continent, to manage and control their property, to furnish them with agricultural implements, houses, barns, and other permanent improvements upon their lands, domestic animals, means of subsistence, and small amounts of money, and to provide them with physicians, farmers, schools and teachers."

In the case of Marchie Tiger v. Western Investment Company, 221 U. S. 386, the court said:

"From the earliest period Congress has dealt with Indians as dependent people and legislated concerning their property with a view to their protection as such.

[fol. 24] Congress has full power to legislate concerning tribal property of Indians, and the conferring of citizenship on individual

Indians does not prevent Congress from continuing to deal with tribal lands.

It is for Congress, in pursuance of long established policy of this Government, and not for the courts, to determine for itself when, in the interest of the Indian, government guardianship over him shall cease.

The privileges and immunities of Federal citizenship do not prevent such proper governmental restraint upon the conduct or property of citizens as may be necessary for the general good."

In the recent case of Sperry Oil & Gas Company v. Chisholm, 68 L. Ed. 392, the court held that the provisions of the Oklahoma Constitution, and applicable State statutes providing the manner of encumbering of homesteads within the State, had no application to restricted Indian lands. The Supreme Court of Oklahoma has held in numberous cases that restricted Indian lands are under the exclusive control and jurisdiction of the Congress of the United States.

Malone v. Wamsley, 80 Okl. 181, 195 Pac. 484;
Smith V. Williams, 78 Okl. 297, 190 Pac. 555;
Walker v. Brown, 43 Okl. 144, 141 Pac. 681;
Wilson v. Greer, 50 Okl. 387, 151 Pac. 629.

In the instant case the Congress having provided that the heirs of See-Sah Quapaw were entitled to take the property of the deceased subject to the laws of descent and distribution of the State of Oklahoma, it is beyound the power of the Legislature of the State to impose any burden or conditions upon the right of said heirs [fol. 25] to succeed to said estate, or to in any way burden the right of said heirs to inherit said property in contravention of the paramount Federal law.

Blanset v. Carden, 256 U. S. 319, 65 L. Ed. 950, 41 Sup. Ct. Rep. 519.

Restricted Indian lands do not become subject to the operation of the laws of the State until all restrictions from the right of the allottee to alienate have been removed and relinquished by the Congress.

Sperry Oil & Gas Co. v. Chisholm, Supra;
In Re Pigeons' Estate, 198 Pac. (Okl.) 309.

The plaintiffs in this action being restricted Quapaw Indians, and the estate inherited by them from See-Sah Quapaw being held in trust for them by the Government, is not subject to the inheritance tax law of the State of Oklahoma, and the injunction as prayed for by the plaintiffs is granted.

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed Aug. 28, 1924

This cause coming on to be heard at the City of Vinita, Oklahoma, in the Eastern Judicial District of Oklahoma, on the 28th day of March, 1924, upon the Amended Bill of Complaint and Answer thereto, and upon a stipulation that the statements of ultimate facts, as set forth in the Amended Bill, are true and correct; and Joseph W. Howell, Esquire, for the Complainants, and George F. Short, Attorney General, C. W. King and Leon S. Hirsh, Assistant Attorneys General, for defendant, C. C. Childers, (the latter having been made sole defendant by amendment to the bill), having been heard both orally and by briefs, and the Court being fully advised in the premises;

Now, therefore, on this 19th day of July, 1924, it is adjudged, ordered, and decreed:

That the land and money involved in this suit were the property of one See-Sah Quapaw before and at the time of her death; that she was a restricted Quapaw Indian and the property aforesaid was held in trust by the United States, as restricted Indian property, under the control and supervision of the Secretary of the Interior, before, at the time of, and after, her death, pursuant to the Act of Congress, approved March 2, 1895, (28 Stat. 876, 907).

[fol. 27] That the property aforesaid passed by inheritance to the complainants in the manner provided for by the laws of succession of the State of Oklahoma, but by virtue and force of the laws of Congress, and is exempted from the operation of the Inheritance Tax Laws of the State of Oklahoma; it being beyond the power of the legislature of the State to impose any burden or condition upon the right of the heirs to succeed to the estate, or to in any way burden the right of the heirs to inherit the property in contravention of the paramount Federal Law.

That the claim of the defendant, C. C. Childers, that he is authorized and entitled, as State Auditor, to impose, demand, and collect by summary process, an inheritance tax upon said property, under the laws of the State of Oklahoma, is unwarranted and without authority of law, and the lien claimed upon said property is void and of no force or effect.

And it is further adjudged, ordered, and decreed that a permanent injunction be issued in this suit against the said defendant restraining and enjoining him, his associate and subordinate officers, and all persons acting through or under him or them, from collecting, or attempting to collect, any inheritance tax from the complainants, or at their expense, on account of the inheritance by them of the estate of the said See-Sah Quapaw, pursuant to the prayer of said Bill of Complaint.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PETITION FOR APPEAL—Filed Oct. 15, 1924

To the above-named plaintiffs, John Beaver and Benjamin Quapaw, and to Joseph W. Howell, Esquire, their solicitor of record:

The plaintiffs above named, John Beaver and Benjamin Quapaw, and their solicitor, Joseph W. Howell, Esquire, will please take notice that the above named defendant, Charles C. Childers, State Auditor of the State of Oklahoma, will present his petition for appeal and assignments of error to the Honorable F. E. Kennamer, Judge of [fols. 29 & 30] the United States District Court for the Eastern District of Oklahoma, sitting at Ardmore, at the United States District Court Rooms in the said city of Ardmore within the said Eastern District of Oklahoma on Wednesday, October 15th, 1924, at one o'clock A. M., or as soon thereafter as counsel may be heard. A copy of the aforementioned petition for appeal and assignments of error are attached hereto and made a part of this notice by reference thereto.

George F. Short, Attorney General of Oklahoma; C. W. King, Leon S. Hirsh, Assistant Attorneys General of Oklahoma, Solicitors for Defendant, Charles C. Childers, State Auditor of the State of Oklahoma.

Acknowledgment

Service of the above notice, together with copies of petition for appeal and assignments of error is hereby acknowledged and accepted this 14th day of October, 1924.

Joseph W. Howell, Solicitor for Plaintiffs, 419 Palace Bldg., Tulsa, Okla.

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 15, 1924

Comes now, on this 13th day of October, A. D., 1924, the Defendant, Charles C. Childers, State Auditor of the State of Oklahoma, by his solicitors George F. Short, Attorney General of the State of Oklahoma and Clifford W. King and Leon S. Hirsh, Assistant Attorneys General of the State of Oklahoma, and together with the Petition for Appeal filed herewith, respectfully shows that the final

decree made and entered in this cause on the 19th day of July, 1924, is erroneous and unjust to said Defendant, assigning as such error, the following:

I

That in determining the said cause it became necessary to construe the Constitution of the United States in connection with the laws of the State of Oklahoma with reference to the alleged contravention of the latter and of the former. The Inheritance Tax Law [fol. 32] of the State of Oklahoma being the Act of the Oklahoma Legislature approved March 15, 1915, (Session Laws 1915, page 215) as amended by Act approved March 25th, 1919, (Session Laws, 1919, page 429) provided no exception from the operation of its terms in favor of the estates of Indians whose realty was restricted by acts of Congress. This involved the question of the construction and application of the second paragraph of Article VI of the Constitution of the United States, providing that the laws made in pursuance of said Constitution and treaties made under its authority should be the supreme law of the land and binding upon the Courts. The final decree herein effectively held that the Inheritance Tax Laws, insofar as they assumed to affect the estates of Indians whose realty was restricted by acts of Congress were in contravention of this clause of the Constitution; but Defendant respectfully shows that said clause of the Constitution is without application and is not contravened by the aforesaid Inheritance Tax Laws for the reason that members of the Quapaw Indian Tribe regardless of restriction are citizens in every respect of the State of Oklahoma, and for the further reason that the devolution of the estate of a decedent citizen of the State of Oklahoma is not restricted against control or taxation, by said State by any provision of the Constitution of the United States or by any law of the United States made in pursuance thereof.

II

The said final decree likewise effectively held that said Inheritance Tax Laws, insofar as they affected the estates of Indians whose realty [fol. 33] was restricted by acts of Congress was in contravention of Article I, Section 8, paragraph 3 of the Constitution of the United States granting to Congress alone the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"; but Defendant respectfully shows that said clause of the Constitution is without application and is not violated by said Inheritance Tax Laws for the reason that the members of the Quapaw Tribe of Indians are citizens in every respect of the State of Oklahoma, regardless of the extent of the restrictions upon their real property and for the further reason that the power to legislate in regard to the citizens of a sovereign State or to the devolution of the estates of citizen decedents has never been delegated to the Federal Government by the several States but is reserved to the States by virtue of Amendment X of the Federal Constitution.

III

Said decree expressly based its conclusion upon the Oklahoma Enabling Act, being Act of Congress of June 16th, 1906, Chapter 3335, (34 Stat. at L. 267), providing in effect that the descent and distribution of Indian estates should take place under the laws of the State of Oklahoma rather than by the laws of the State of Arkansas prescribed in the Act of Congress of April 28th, 1904, Section 2 (33 Stat. at L. 573). In so doing said decree assumed the validity of an act of congress providing the methods of descent and distribution of the estates of citizens of a sovereign State; the validity of such act insofar as it seeks to extend the power of Congress or the Federal Government through the Interior Department to include the right to direct the descent or distribution of the estates of citizen decedents [fol. 34] of the State of Oklahoma was questioned and denied by Defendant in his Answer and during the trial. Defendant now respectfully shows that the decree is prejudicially erroneous in holding that Congress in the said acts of 1904 and 1906 could supersede the jurisdiction of the State of Oklahoma subsequent to statehood of said State without specific delegation in the Constitution of the United States and in violation of Amendment X thereof.

IV

Said decree effectively construes the provisions of the Act of Congress of March 2nd, 1895, (28 Stat. at L. 907), as validly limiting the power of the State of Oklahoma in regard to the estates of Indian citizen decedents subsequent to statehood, (November 16, 1907); and likewise effectively construes the Act of Congress of March 3rd, 1921, (41 Stat. at L. 1225, 1248) as limiting the power of the State of Oklahoma in regard to the devolution of estates of its citizens insofar as the same related to Indians of a certain class. The said Acts place restrictions upon alienation of allotted Quapaw Indian lands; but Defendant respectfully shows that, as urged in his pleadings herein, the Constitution of the United States fails to delegate to Congress, or to the Federal Government, any power with regard to devolution of decedents' estates and that, therefore, insofar as the said Acts of 1895 and 1921 conflict with and place a burden upon the exercise of such power by the State of Oklahoma, the said Acts are in contravention of Amendment X of the Federal Constitution and void.

V

Said decree, in effect, sustains the contention of Plaintiffs, as alleged in their bill of complaint, that the State of Oklahoma has no [fol. 35] authority over the devolution of the estates of deceased Quapaw Indians, but such power is invested in the Secretary of the Interior by virtue of Act of Congress of June 25th, 1910, (36 Stat. at L. 855) and statutes supplemental thereto inasmuch as the admission of such control would be tantamount to the admission of the

right to levy excise upon such devolution. Defendants show, however, that said act of 1910, insofar as it purports to extend to the removal of such power from the State of Oklahoma and the vesting thereof in the Federal Government is invalid and inoperative for the reasons set forth in the next preceding assignment of error.

VI

And Defendant further shows that the decree is erroneous in denying the right of the State of Oklahoma to the exercise of sole and exclusive jurisdiction over the devolution of estates of decedent citizens of said State irrespective of race, together with the right as expressed by said Inheritance Tax Laws of 1915 and 1919, to levy excise upon such devolution since the said right is reserved to the said State by Amendment X of the Federal Constitution and recognized by Congress in the Act of June 16th, 1906 (36 Stat. at L. 267, Chap. 3335), following the Act of April 28th, 1904, (37 Stat. at L. 573, Chap. 1824, Sec. 2) which said acts operated to surrender to the new State of Oklahoma upon admission into the Union full control over the devolution and probate of the estates of citizen decedents regardless of race.

VII

The said decree conclusively determines that the State of Okla- [fol. 36] homa cannot levy an inheritance tax upon the devolution of a citizen decedent's estate partially composed of property to which an exemption from taxation has been affixed by Federal statute; but it is respectfully shows that said decree fails to designate between a tax upon the property and an excise upon the devolution. The latter right not being the subject of any express exemption by congressional legislation or authorities, in so failing to designate said subjects the decree has erroneously and prejudicially denied to the State of Oklahoma a right and power impliedly existent in it as a sovereign State and thereby abrogated a portion of those attributes of sovereignty guaranteed to each of the several States by reason of the fundamental theory and nature of the American dual-sovereignty system.

VIII

Said decree construes and applies the Constitution of the United States in holding that said Constitution grants to the Congress of the United States exclusive power and jurisdiction of the Indian citizens of Oklahoma and their property. But Defendant assigns that such construction and application is without warrant in the terms or import of said Constitution and that Congress is without authority to remove from the taxable or other governmental control of the State the persons or rights, privileges or property of such citizens except in the furtherance of a strictly governmental purpose either expressly or impliedly authorized by the Constitution of the United States.

Wherefore, defendant prays that said decree be reversed and the District Court be directed to vacate the injunction granted therein, [fols. 37 & 38] to dismiss the bill and to send the defendant hence with his costs herein expended.

C. C. Childers, State Auditor of the State of Oklahoma, Defendant, by George F. Short, Attorney General of the State of Oklahoma; Clifford W. King, Leon S. Hirsh, Assistant Attorneys General of the State of Oklahoma, his Solicitors.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Oct. 15, 1924

To the Honorable F. E. Kennamer, Judge of the District Court of the United States within and for the Eastern District of the State of Oklahoma, in the City of Ardmore, within said District:

The above named Defendant, Charles C. Childers, State Auditor of the State of Oklahoma, feeling himself aggrieved by the final decree made and entered in this cause, on the 19th day of July, A. D., 1924, does hereby appeal from said final decree so made and entered to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith; and he prays that the appeal be allowed and that citation issue as provided by law and that a transcript of the record proceedings and papers upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

And your petitioner further prays that the proper order, touching [fol. 40] the security to be required of him to perfect his appeal, be made.

Dated this the 13th day of October, A. D., 1924.

C. C. Childers, State Auditor of the State of Oklahoma, Defendant, by George F. Short, Attorney General of the State of Okla.; Clifford W. King, Leon S. Hirsh, Assistant Attorneys General of the State of Oklahoma, His Solicitors.

Allowance of Appeal

The foregoing Petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five Hundred Dollars.

Done at the City of Ardmore within the Eastern District of the State of Oklahoma, this 15th day of October, A. D., 1924.

F. E. Kennamer, Judge of the District Court of the United States within and for the Eastern District of the State of Oklahoma.

[File endorsement omitted.]

[fols. 41–44] Bond on Appeal for $1,000—Approved and filed Nov. 5, 1924; omitted in printing

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[fol. 45] In United States District Court

[Title omitted]

Stipulation re Transcript of Record—Filed Nov. 5, 1924

In the above entitled case it is hereby stipulated by and between the solicitors for the respective parties that if an appeal be taken herein, the clerk, in making a transcript of the record, may omit therefrom all of the papers and records other than those hereinafter set forth and shall incorporate in said transcript only the following, and no other, papers or records, to-wit:

1. Amended Bill of Complaint,
2. Answer to Amended Bill of Complaint,
3. Stipulation,
4. Opinion of the Court,

[fol. 46] 5. Journal Entry,

6. Petition for Appeal,
7. Assignment of Errors,
8. Order Allowing Appeal,
9. Stipulation for Transcript,
10. Citation.

And it is further stipulated that order may be entered if the same to the court shall seem proper in accordance with this stipulation.

Dated this 29th day of October, 1924.

George F. Short, Attorney General of Oklahoma; C. W. King, Assistant Attorney General of Oklahoma; Leon S. Hirsh, Assistant Attorney General of Oklahoma, Solicitors for Defendant, Charles C. Childers, State Auditor of Oklahoma. Joseph W. Howell, Solicitor for Plaintiffs, John Beaver and Benjamin Quapaw.

[File endorsement omitted.]

[fol. 47] In United States District Court

Clerk's Certificate

United States of America,
Eastern District of Oklahoma, ss:

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of

the record in the case of John Beaver and Benjamin Quapaw, Plaintiffs vs. C. C. Childers, State Auditor of the State of Oklahoma, Defendant, No. 3003, Equity, as was ordered by stipulation of counsel herein to be prepared and authenticated as the same appears from the records in my office.

I do further certify that the original Citation, with service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court at my office, in the City of Muskogee, Oklahoma, this 10th day of November, A. D. 1924.

W. V. McClure, Clerk, by Lacy Grimes, Deputy. (Seal of the United States District Court, Eastern District of Oklahoma.)

Endorsed on cover: File No. 30,691. E. Oklahoma D. C. U. S. Term No. 202. Charles C. Childers, State auditor of the State of Oklahoma, appellant, vs. John Beaver and Benjamin Quapaw. Filed November 14, 1924. File No. 30,691.